IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 325 OF 2001.

Shri Venkatesh A. Narvenkar,
Bazarwado, Sanguem, Goa. ... Petitioner.

Versus

1. State of Goa by its
   Secretary, Urban
   Development, Secretariat,
   Panaji, Goa.
2. Sanguem Municipal Council
   through its Chief Officer,
   Sanguem, Goa.
3. The Director of Urban
   Development, Govt. of Goa,
   Collectorate Building,
   Panaji, Goa. ... Respondents.

Mr. A.F. Diniz, Advocate for the Petitioner.

Mrs. W. Coutinho, Government Advocate for the
Respondents 1 and 3.

Mr. S.D. Lotlikar, Senior Advocate with Mr. A.D. Bhobe,
Advocate for the Respondent No. 3.

Coram: D.G. DESHPANDE AND
P.V. HARDAS, JJ.

Date: 17th February 2003.

ORAL JUDGMENT (PER HARDAS, J.)

The present petition has been filed by the petitioner praying for a writ of mandamus directing the respondents to give the petitioner benefits of the Fifth Pay Commission and also to pay to the petitioner the arrears of salary, pension and gratuity on the basis of the Fifth Pay Commission's recommendations and, further, to continue to pay to the petitioner the pensionary benefits from 1st September 2001 in accordance with the Fifth Pay Commission's recommendations and fixation of

the pension thereunder.

2. The facts necessary for the decision of the petition are set out hereunder:-

The petitioner was appointed as Librarian and Radio Operator on 29th January 1966, in the Sanguem Municipal Council. Since the petitioner was not regularised for more than two decades, the petitioner filed Writ Petition No. 70 of 1991, in this Court. The said petition was decided by the Division Bench of this Court by its Judgment, dated 22nd November 1995. The Division Bench in the aforesaid Judgment held as under:-

> "18. In view of this, we feel that the petitioner who was under paid at a rate less than the minimum wage which could be available to the citizens in the State, is entitled for not only the regularisation of his services as Librarian, but is also entitled for the scale at Rs. 425-700 and the permissible increases thereafter. Though the petitioner was employed on 29.1.1966 the post of Librarian is provided with a pay scale of Rs. 425-700 by a Notification issued on 18.11.1975. The petitioner will also be entitled to the subsequent revision of the pay scale made on the basis of the Pay Commission Report etc..
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> 19. The petitioner will be entitled for all the arrears and benefits, that too from 18.11.1975 with permissible increases. The services of the petitioner shall be deemed to be regularised in the post of Librarian from 18.11.1975 as if the post is created or sanctioned under the provisions of the said Act.

> 20. We direct the respondents to pay the arrears to the petitioner within four months from today. Rule absolute accordingly. However there shall be no order as to costs."

3. Since the respondents did not comply with the said Order, the petitioner filed Contempt Petition No. 15 of 1996 in this Court. Meanwhile, on 17th January 1997, the respondent Council paid to the petitioner a sum of Rs. 4,81,506/- towards settlement of arrears of salary from 18th November 1975 to 14th May 1996 in terms of the Order of this Court. Since the payment had been received by the petitioner, the Contempt Petition was disposed of by the Division Bench of this Court, on 3rd February 1997. The learned Judges of the Division Bench of this Court also observed thus:-

> "Alongwith the reply the respondent also filed a photocopy of the stamped receipt dated 17th January 1997 wherein the petitioner has acknowledged the receipt of Rs. 4,81,506/- in full and final settlement of the arrears of his salary from 18-11-1975 to 15-5-1996 in terms of the Judgment passed by this Court."

4. Meanwhile the petitioner retired from services on 30th June 1997. According to the petitioner, since the second respondent Council had failed to pay to the petitioner his pension and gratuity, the petitioner filed another Writ Petition No. 130 of 1999 in this Court. The said petition came to be disposed of by the Judgment, dated 14th June 1999. During the hearing of

the present petition we had called for the record of Writ Petition No. 130 of 1999.

5. In paragraph 9 of Writ Petition No. 130 of 1999, the petitioner has stated thus:-

> "9. The Petitioner again by his letter dated 28.06.1998 requested the Respondent No. 2 to pay all the arrears including the gratuity, pension after revising the same as per Vth Pay Commission Pay Scale. The Respondent No. 2 again by his reply dated 7.07.1998 informed the Petitioner that the issue is under attention of the Council and the opinion of the legal adviser is awaited. However, inspite of the abovementioned correspondence and the assurance and reply, the Respondents did not pay the pension, gratuity and other benefits to the Petitioner."

In the said petition, the petitioner had prayed for issuance of writ of mandamus directing the respondents to pay to the petitioner his arrears of part of pay, pension, gratuity and other consequential benefits and had also prayed for a direction to the respondents to revise the pay scale of the petitioner from 18th November 1975 as observed in Judgment dated 22nd November 1975 and to pay to the petitioner all the difference of wages as was payable to the petitioner till date.

6. This Court, while disposing of Writ Petition No. 130 of 1999, in paragraph 2, has held thus:-

> "...In view of this position, the petitioner cannot now be heard to urge that he is entitled for more arrears of pay, especially when the petitioner had himself given a receipt for sum of Rs. 4,81,506/- in full and final settlement of the arrears of salary from 18-11-1975 to 14-5-1976. Accordingly, so far as further arrears of pay as claimed by the petitioner are concerned, we do not find any merit in the petition."

At paragraph 3, it is held as follows:-

> " Accordingly, we are of the opinion that the petitioner would be entitled to gratuity and pension on the basis of his regularisation with effect from 18-11-1975 and to no other benefits, namely, consequential benefits claimed by him. The liability to pay the pension and gratuity shall be that of Respondent No. 2 alone."

7. After the decision of this petition, the petitioner made various representations for extending the benefit of the Fifth Pay Commission to him. The second respondent Council in the letter issued to the petitioner, dated 10th September 2001, brought to the notice of the petitioner that this Court in its Judgment, dated 14th June 1999, had specifically held that the petitioner was not entitled to any other benefits, namely, the consequential benefits claimed by the petitioner and, as such, it was clear that this Court had not considered the petitioner's claim of revised pay scale. The second ground stated by the second respondent Council is that the petitioner was not

entitled for the benefit of the Fifth Pay Commission, as the petitioner was not in service on 27th October 1997, when the Fifth Pay Commission's recommendations were implemented as the petitioner had retired on 30th June 1997. This stand of the respondents is reiterated in the affidavit filed in the present petition.

8. We have heard Mr. Diniz, the learned counsel appearing on behalf of the petitioner, and Mrs. Coutinho, learned Government Advocate appearing on behalf of the respondents 1 and 3 and Mr. Lotlikar, learned senior advocate appearing on behalf of the respondent no. 2.

9. In Writ Petition No. 130 of 1999, the petitioner had made a specific grievance that the benefits of the Fifth Pay Commission should be made applicable to him and that he was entitled to the arrears of salary. This was stated by the petitioner in paragraph 9 of the said petition. The Division Bench of this Court in no uncertain terms has held that the petitioner was not entitled for any revision in his pay scale. We, therefore, cannot go beyond the Order of the Division Bench rendered in Writ Petition No. 130 of 1999. We, therefore, see no merit in the present petition and the same is liable to be dismissed. The petitioner, however, would be entitled to revision in

his pension as per the Rules applicable to the petitioner.

10. The Writ Petition is, accordingly, partly allowed. The claim of the petitioner for arrears of salary and other consequential benefits is dismissed. However, it is clarified that the petitioner would be entitled to such revision in the pension as is permissible in law. Rule is discharged in respect of the relief refused and Rule is made absolute in terms of the relief granted with no order as to costs.

(D.G. DESHPANDE)
JUDGE.

(P.V. HARDAS)
JUDGE.

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